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inhabitants thereof desired to license the sale of alcoholic liquors therein, the court instructed the jury as matter of law that a certain city was "no-license" territory by reason of an election, though there was no evidence on the subject. *Held*, reversible error; the court cannot take judicial notice of such elections and their result. *People v. Mueller*, (Cal. 1914) 143 Pac. 748.

It has been held in several jurisdictions that courts cannot take judicial notice of the result of an election held under a local option law, but that the fact of such election must be established by evidence. *Grider v. Tally*, 77 Ala. 422; *Norton v. State*, 65 Miss. 297; *Gue v. City*, 53 Ore. 282; *Craddick v. State*, 48 Tex. Cr. R. 385. Other jurisdictions have adopted a contrary rule: *Comps v. State*, 81 Ga. 780; *Savage v. Com.*, 84 Va. 582. Many cases, some of them approving the one rule or the other, may be distinguished on the particular statutes involved, as *State v. Schmits*, 19 Idaho 566, holding that the court will take judicial notice, since the statute provides that the state need not prove facts showing a majority vote; *People v. Murphy*, 93 Mich. 41, holding that the matter is one of fact to be proved in the way prescribed by the statute; and, perhaps, the principal case, where the statute provided that the record of the governing body of the city should be *prima facie* evidence of the result of the election, thus indicating that it was a matter to be proved as a fact. Other cases have held that the sufficiency of the evidence (consisting of records of the election) is for the court and cannot be disputed by evidence as to irregularity in the election, in collateral proceedings. *State v. O'Brien*, 35 Mont. 482; *Crouse v. State*, 57 Md. 327. The latter case is frequently cited as authority for the holding that courts will take judicial notice of the result of such elections; it would seem rather to hold that certain evidence to be offered to the court is made conclusive in collateral proceedings and cannot be disputed by other evidence offered to the jury.

EVIDENCE—JURORS TASTING AND SMELLING INTOXICATING LIQUORS.—Defendant was prosecuted for selling liquor in violation of the prohibitory liquor law. At the trial two bottles of liquor found on the person of the defendant at the time of his arrest, and one which he had just sold, were introduced into evidence. The court upon the request of the jury, neither party objecting, permitted the bottles to be taken to the jury room, where the jurors opened one bottle and tasted and smelled of the contents. *Held*, no prejudicial error, since both parties admitted the bottles contained whiskey, and neither objected to the jury having them. *State v. Watson* (Kan. 1914) 142 Pac. 956.

Whether an exhibit properly in evidence may be taken to the jury room for inspection and examination by the jury, is a matter within the sound discretion of the trial judge in his control over the deliberations of the jury. *State v. Shaw*, 73 Vt. 149; *Sawyer v. Garcelon*, 63 Me. 25; *Starke v. Wolf*, 90 Wis. 434; *People v. Hughson*, 154 N. Y. 153; *Campbell v. State*, 23 Ala. 83; *Tabor v. Judd*, 62 N. H. 288. Exhibits not properly in evidence should be excluded from the jury room. *In Re Barney's Will*, 71 Vt. 217; *Gable v. Rauch*, 50 S. C. 95; *State Bank of Tabor v. Brewer*, 100 Ia. 576; *Yates v. People*, 38 Ill. 527. In Kansas it is held error to allow the jury, in

open court, to taste and smell exhibits of liquor to determine its intoxicating qualities, on the ground that the information thereby acquired is evidence and the juror becomes a witness and should be sworn as such. *State v. Lingrove*, 1 Kan. App. 51; *State v. Eldred*, 8 Kan. App. 625; *State v. Coggins*, 10 Kan. App. 455. Contra: *People v. Kinney*, 124 Mich. 486. Why the knowledge which a juror acquires by seeing and touching exhibits properly in evidence does not, whereas the knowledge obtained by tasting and smelling does, convert him into a witness is difficult to understand. In either case the knowledge results from the use of the senses and it is submitted that the avenue of information whether by sight, hearing, touch, taste or smell, should not so operate as to make knowledge gained by one group of the senses evidence, which is not evidence if acquired by another group. *Denver v. T. & F. W. Ry. Co. v. Ditch Co.*, 11 Col. App. 41; *Washburn v. Railroad Co.*, 59 Wis. 364. It would seem that no hard and fast rule should be laid down as in the Kansas cases, but that the question should be left to the discretion of the trial judge, who on grounds of propriety will not ordinarily allow the jurors to so taste and smell the liquor in controversy. WIGMORE, § 1159; 1 GREENLEAF, (16th Ed.) 31. Since in the instant case neither party objected to the jury having the bottles of whiskey, they waived the right, which would otherwise exist under the Kansas rule, to assign this as error.

HUSBAND AND WIFE—NECESSARIES.—This action was brought by a tradeswoman against a husband to recover \$15,000 for dresses supplied to the wife within a period of six years and alleged to have been necessities. Defendant had an annual income of \$40,000 and he had expended \$30,000 a year for the living expenses of himself and wife. The court held that the question as to what are necessities depends in a large measure upon the style of living adopted by the husband, and that the burden of proof was on the defendant to show that he had made ample provision for his wife. *Wickstrom v. Peck*, (1914) 148 N. Y. S. 596.

The husband is under a legal duty to support his wife. As this duty cannot be enforced by the wife in a civil action, the law holds him liable for necessities supplied to her by third parties. It has been held that necessities consist only in bare necessities such as food, drink, and clothing. *Shelton v. Pindleion*, 18 Conn. 417; *Ray v. Adden*, 50 N. H. 82. The principal case expresses the modern view. Necessaries are such articles of utility as are suitable to maintain the wife in accordance with the estate and social position of the husband, *Bergh v. Warner*, 47 Minn. 250; *Raynes v. Bennett*, 114 Mass. 424; *Barr v. Armstrong*, 56 Mo. 577. Even articles of ornament, such as jewelry, may be necessities. *Cooper v. Haseltine*, 50 Ind. App. 400. The true criterion for determining what are necessities is the husband's apparent financial and social position, *Clark v. Cox*, 32 Mich. 204; SCHOULER, HUSBAND AND WIFE, § 102, and not the wife's social position, *Bonny v. Perham*, 102 Ill. App. 634. What are necessities is a question for the jury, *Davis v. Caldwell*, 12 Cush. 512. A husband is liable in an action to recover for necessities only if he has failed in or neglected his duty to provide suitably for his wife, *Clark v. Cox*, 32 Mich. 204. The authorities are